

within 30 Days. The Department will make Final Payment, including the release of all remaining retainage, and release any escrowed bid documents within 20 Days of receipt of the above letters, which complete the Closeout Documentation. For a related provision, see Section 108.8 - Final Payment.

If the Contractor fails to resolve issues and deliver Closeout Documentation within the 30 Days provided in Section 107.9.5, the Department may provide a final notice informing the Contractor in writing that unless the Contractor Delivers all Closeout Documentation within 30 Days of the date of Receipt of final notice, the Contractor shall be in Default under the Contract. The Contractor shall become ineligible to Bid on any Department Contracts. The Department may then pursue all remedies provided by the Contract or by law, including withholding Final Payment. For a related provision, see Section 102.1.1 - Eligibility to Bid - Basic Requirements.

107.9.6 No Waiver of Legal Rights Final Acceptance does not preclude the Department from correcting any measure, estimate, or certificate made. The Department may recover from the Contractor or its Surety, or both, overpayments made due to failure to fulfill Contract obligations.

A waiver on the part of the Department of any breach of any part of the Contract is not a waiver of any other or subsequent breach.

The Contractor retains liability for latent Defects, fraud (or such gross mistakes as may amount to fraud), and warranty obligations.

SECTION 108 - PAYMENT

Scope of Section This Section contains general provisions related to payment including measurement of quantities, progress payment, retainage, the right to withhold payment, and other payment-related terms.

108.1 Measurement of Quantities for Payment

108.1.1 Use of Plan Quantities Payment for all items labeled in the Bid Documents as "Plan Quantity" will be based upon the estimated quantity. The Contractor shall accept such payment as full and complete compensation for that item without physical

measurement. Upon mutual written Agreement by the Department and the Contractor, the estimated quantity of any item of Work may be used as the final quantity for that item without physical measurement.

108.1.2 General Measurement Provisions The Department will use the International System of Units (SI) for all measurements unless the Contract utilizes the U.S. Customary system. Measurement of Bid Items shall include all resources necessary to complete the Pay Item of Work under the Contract. The Department will measure items for payment in accordance with the “Method of Measurement” provisions of the applicable Specification. For all items of Work, other than those paid for by lump sum, the Department shall determine the quantities accepted as the basis for Final Payment after the Physical Work is Completed.

108.1.3 Provisions Relating to Certain Measurements Unless expressly provided otherwise, the Department and the Contractor shall use the following general measurement provisions.

Lump Sum or Each Lump Sum payment is total reimbursement for all resources necessary to complete the item of Work. Each is payment per complete unit.

Length Length is defined as linear measurement parallel to the item base or foundation. A station is 1 kilometer [100 ft].

Area Area refers to the length, as defined above, multiplied by the width, which is defined as the linear measurement perpendicular to the item base or foundation. When calculating area for payment, use horizontal, longitudinal, and plan (neat) transverse measurements for surface area computations. Make no deductions for individual fixtures having an area of 1 square meter [1 yd²] or less. For purposes of the preceding sentence, “fixtures” means small subareas that do not receive material(s) or on which no Work is performed.

Volume Measure Structures using plan (neat) or approved Contract Modification dimensions. Use the average end area method to compute excavation volumes. Use hauling vehicles approved by the Department, when transporting Materials measured by volume. Measure Materials at the point of Delivery. Ensure the body shape allows contents to be accurately measured. Load and level vehicles to their water level capacity. Obtain the Department’s approval to convert Materials specified for measure

by mass to volume. Use specified conversion factors.

Measure water to the nearest cubic meter [gal] with calibrated tanks, distributors, certified scale weights or water meters.

Measure bituminous Materials by the liter [gal] or megagram [ton]. Measure liquid volumes at 15.5°C [60°F] or correct to volume at 15.5°C [60°F] under ASTM D1250 or ASTM D633.

Use net certified scale weights or certified rail car volumes. Correct for bituminous Material lost, wasted, or otherwise not incorporated in the Work. Correct net certified bituminous Material weights or volumes for loss or foaming when shipped by truck or transport.

Measure timber by the cubic meter [board ft]. Base measurement on nominal widths and thicknesses and individual maximum lengths.

Mass A metric ton is 1000 kilograms or 1 megagram [1 ton]. Use certified scales to determine mass (weight). Accept certified “car weights” for Material shipped by rail, except for Material to be subsequently processed in mixing plants. Obtain certified haul truck tares as specified. Each Haul Truck shall display a legible identification mark.

Measure cement by the kilogram [lb] or metric ton [ton].

Accept nominal mass or dimensions for standard manufactured items unless otherwise specified.

Accept industry-established manufacturing tolerances, unless otherwise specified.

Measure Aggregate mass in the saturated surface dry condition.

The Contractor shall furnish and maintain weigh systems tested and certified by the State or use certified permanently installed commercial scales. The Contractor shall provide certifications after each set-up and before use or as requested by the Department. The weigh system shall be scaled after certification and display and certification stamp. Only mechanical or electronic scales shall be used.

The beams, dials, platforms, and other scale Equipment shall be arranged for safe and convenient viewing by the operator and inspector. Scales shall be tested for accuracy before use at a new site. Platform scales shall be level and with rigid bulkheads at each end. The Department will adjust quantities of Materials received on scales found to be outside of specified tolerances, using a correction based on the last documented test within specified tolerances.

All materials, which are measured or proportioned by weight, shall be weighed on approved weighing systems. When a delivery slip is required for payment of Materials measured by weight, weighing, except for automatic ticket printer systems, shall be performed on approved platform truck scales by a Licensed Public Weighmaster furnished by the Contractor, in accordance with the following requirements.

(A) Licensed Public Weighmaster A Licensed Public Weighmaster shall be any person satisfying the requirements of the State Sealer of Weights and Measures and granted a license as a Public Weighmaster. Each Licensed Public Weighmaster shall provide him/her with an impression seal as required by the State Sealer and shall impress this seal upon delivery slips issued by him/her. When completed by a Licensed Public Weighmaster, delivery slips shall be considered as the Weight Certificates required by the Maine Weights and Measures Law, MRSA Title 10. The Weighmaster shall perform all duties required of him/her by law and the specifications.

(B) Weighing Trucks Tare weights of trucks hauling stone, bituminous mixes and similar items shall be determined twice daily, once during the forenoon and once during the afternoon. The tare weight thus found shall be used to determine the net load until the next tare weighing of the empty truck. Tare weights of trucks hauling liquid and bituminous cement materials or other items not generally on a repeat basis shall be determined immediately before being loaded and the weight thus found shall be used for that load only. The tare weight of a truck shall be defined as the weight of the empty vehicle including the driver, but with no passengers.

(C) Platform Truck Weighing Systems An approved platform truck scale, meeting the following requirements shall be provided, installed and maintained, when required, by the Contractor or be available to him/her at an approved nearby location:

1) The weighing system shall conform to the specifications, tolerances and regulations for commercial weighing devices of the National Institute of Standards and Technology and shall be accurate within maximum tolerances of plus or minus 1 kg [2 lb] or 300 kg [1000 lb] of load.

2) No auxiliary indicators, in combination with the beams or dial of the weighing system shall be used to increase the maximum allowable load above 105 percent of the manufacturer's rated capacity, as stated in the National Institute of Standards and Technology Handbook 44 S.1.7.

3) The platform of the weighing system shall be sufficient size to accommodate the entire vehicle or combination of vehicles. If a combination of vehicles must be divided into separate units in order to be weighed, each unit shall be entirely disconnected before weighing and a separate weight certificate, delivery slip, or ticket shall be issued for each separate unit.

4) The value of the minimum graduation on the indicator of the scale shall not be greater than 10 kg [20 lb]. All weighing shall be read and recorded to the nearest 10 kg [20 lb or one-hundredth ton].

5) The weighing system shall be set on concrete or other approved foundation. The recording mechanism of the scale shall be suitably housed or protected from weather.

6) The Contractor shall have the weighing system inspected and approved by the State Sealer of Weights and Measures or by a Repairman registered and approved by the State Sealer within a period of 12 months preceding the date of any weighing and again after each change of location.

(D) Check Weighing for Platform Truck Weighing System Check weighing shall be made on the weights and on the weighing in scales during production in the following manner:

1) At least twice during 5 days of production, in the presence of a State Inspector, a loaded truck which has been weighed and issued a weigh slip shall be turned and a new weighing made of the truck and load with the truck heading in

reverse direction and at the opposite end of the weighing system platform from the first weighing. The new weight will be recorded. If the variation from the first weight is 0.2 percent or less, the fact will be so noted in the project records. However, if the variation exceeds 0.2 percent, the scales may not be used until rechecked and resealed by the State Sealer of Weights and Measures.

2) At least twice during 5 days of production, a loaded truck, which has moved off the weighing system, will be intercepted, directed back to the scales, and reweighed under supervision of a State Inspector.

3) At least twice during 5 days of production, in the presence of a State Inspector, a truck which has been emptied will be directed to the weighing system before being loaded at a time other than the normal tare weighing and weighed again for a check on the tare weight.

4) Check weighing will be on a plant basis and, although a plant may produce material for more than one project or Contract, check weighing will not be required for each project or Contract.

5) Although at least twice during 5 days of production, additional checks will be made occasionally at the discretion of the Engineer. Claims by the Contractor for delays or inconvenience due to check weighing will not be considered.

(E) Reciprocal Agreements Weighing of materials on weighing systems located outside the State of Maine will be permitted for materials produced or stored outside the State, when requested by the Contractor and approved. Out-of-state weighing, in order to be approved, must be performed by a Licensed Public Weighmaster or a person of equal authority in the State concerned, on scales accepted in the State concerned and meeting the requirements of this Section.

(F) Delivery Slips Serially prenumbered delivery slips of acceptable size and format for stating the following minimum information shall be furnished by the Contractor, in as many copies as may be necessary. One copy shall be retained by the Resident or Inspector upon accepting delivery of the material.

- 1) Vehicle identification
- 2) Date loaded

- 3) Project number
- 4) Identification of material:
 - a) Source location of supplier
 - b) Type and grade
 - c) Tank number from which loaded, if liquid
- 5) Quality information as necessary for bituminous liquids
 - a) Specific gravity at 15°C [60°F]
 - b) Serial number of the Certificate of Analysis as furnished according to Division 700, General Statement
 - c) The Certificate Statement as required in Division 700, General Statement
 - d) The Viscosity of the material: if asphalt cement, in poises at 60°C [140°F] and in centistokes at 135°C [275°F]; if other bituminous liquid, the specified viscosity according to the type and grade shown in Section 702
- 6) Quantity information as necessary: gross, tare and net weights, volume of load if not material requiring weighing, net liters [gal] at 15°C [60°F] if bituminous liquids
- 7) Signatures (legible initials acceptable) of: Weighmaster (if weight measured material), Contractor's representative (if volume measured material), and Resident (Cover Slips).

If materials are shipped by rail the car weight may be accepted provided that only the actual weight of material is paid for. However, car weights will not be acceptable for materials to be passed through mixing plants. Trucks used to haul material being paid for by weight shall be weighed empty daily, at such times as directed. Each truck shall bear a legible identification mark.

Rail shipments of bituminous liquid shall be measured directly by volume. Correction shall be made when liquid bituminous material has been lost from the car, wasted, or otherwise not incorporated in the work. Other shipments of bituminous liquids will be measured by the liter [gal] or megagram [ton]. Volumes will be measured at 15°C [60°F] or will be corrected to the volume at 15°C [60°F] using the tables in ASTM D1250.

When bituminous liquids are shipped by truck or transport, net certified weights or volume subject to correction for loss or foaming may be used for computing quantities. Net certified weight shall be determined upon loading for all bituminous liquids when shipped by truck or transport. The net weight of each load shall be

converted to net liters [gal] at 15°C [60°F] by a conversion factor expressed in kilograms per liter [lb/gal].

Time Measure Equipment by hours in accordance with Section 631 - Equipment Rental.

108.2 Progress Payments

108.2.1 Generation of Progress Payment Estimates The Department will estimate the amount of Work performed at least monthly and make payment based upon such estimates. Estimates may be paid once every two weeks if, in the opinion of the Resident, the amount of Work performed is sufficient to warrant such payment. No such estimates or payment will be made if, in the judgment of the Resident, the Work is not proceeding in accordance with the provisions of the Contract, or when the total value of the Work performed since the last estimate amounts to less than \$5,000. The Contractor agrees to waive all claims related to the timing and amount of such estimates.

The Contractor elects or if the Contract requires, the Contractor will submit an application for progress payment with a detailed written explanation of the payments requested, on forms and media approved by the Department, to the Resident for approval. The Resident may request that the Contractor submit backup documentation including copies of receipts, invoices, and itemized payments to Subcontractors.

108.2.2 Payment The Department will make payment within 15 Days if the Contractor agrees to accept electronic transfer of payments in a manner approved by the Department, except as otherwise provided in the Contract. In other cases, the Department will make payment within 30 days, except as otherwise provided in the Contract. These payment obligations shall not apply in the event of unforeseeable circumstances such as insufficient legislative appropriations, information systems failure, and other Uncontrollable Events. All payments made are subject to correction in subsequent Progress Payments and the Final Payment. For related provisions, see Sections 107.9.5 - Final Acceptance, 108.8 - Final Payment, and 108.9.2 - No Inflation Adjustments/Interest.

108.2.3 Mobilization Payments Mobilization includes the mobilization and demobilization of all resources as many times as necessary during the Work. The maximum amount that the Department will pay for Mobilization is 10% of the Bid less

the amount bid for Mobilization. The Department will pay any amounts in excess of 10% upon Final Acceptance.

Upon approval of all pre-construction submittals required for approval by this Contract including those listed in Section 104.4.2 - Preconstruction Conference, the Contractor will receive payment of 50% of the Lump Sum price for Mobilization, not too exceed 5% of the Bid less the amount bid for Mobilization. After the Department determines that the Work is 50% complete, the Contractor will receive the other 50% of the Lump Sum price for Mobilization, not too exceed 5% of the Bid less the amount bid for Mobilization. Any remaining Mobilization will be paid upon Final Acceptance.

108.3 Retainage The Department will pay 100% of each approved Progress Payment until the Work is approximately 50% complete. Thereafter, the Department will deduct 5% of the amount of each Progress Payment as retainage. In the event that the Department reasonably believes that retainage will be insufficient to cover all Contractor obligations under this Contract, the Department may increase the retainage to up to 5% of the Contract amount.

The Department may hold, temporarily or permanently, retainage as needed to reflect amounts due the Department under the Contract and to assure timely Completion of the Work in Conformity with the Contract. The Department may also disburse retainage to Subcontractors pursuant to 23 M.R.S.A. § 52-A(2). For a related provision, see Section 104.5.6 - Subcontractor Claims for Payment.

The Contractor may withdraw retainage by depositing certain securities with the Treasurer of State as provided by 23 M.R.S.A. § 52-A(1).

Upon Completion of Physical Work, the Contractor may request that the Department reduce retainage. The Department may grant or deny such request as it deems desirable and prudent. Otherwise, retainage will be held until Final Acceptance. For related provisions, see Sections 107.9.5 - Final Acceptance and 108.8 - Final Payment.

108.4 Payment for Materials Obtained and Stored Acting upon a request from the Contractor and accompanied by Receipted bills, the Department will pay for all or part of the value of acceptable, non-perishable Materials that are to be incorporated in the Work, including Materials that are to be incorporated into the Work, not delivered on the Work site, and stored at places acceptable to the Department. Examples of such Materials

include steel piles, stone masonry, curbing, timber and lumber, metal Culverts, stone and sand, gravel, and other Materials Delivered on or near the Work site at acceptable storage places. The Department will not make payment on living or perishable Materials until acceptably planted in their final locations.

Materials paid for by the Department are the property of the Department, but the risk of loss shall remain with the Contractor. Payment for Materials does not constitute Acceptance of the Material. If Materials for which the Department has paid are later found to be unacceptable, then the Department may withhold amounts reflecting such unacceptable Materials from payments otherwise due the Contractor.

In the event of Default, the Department may use or cause to be used all paid-for Materials in any manner that is in the best interest of the Department.

108.4.1 Price Adjustment for Hot Mix Asphalt: For all contracts with hot mix asphalt in excess of 5000 Mg total, a price adjustment for performance graded binder will be made for the following pay items:

Item 403.206 Hot Mix Asphalt - 25 mm [1 in]

Item 403.207 Hot Mix Asphalt - 19 mm [3/4 in]

Item 403.208 Hot Mix Asphalt - 12.5 mm [1/2 in]

Item 403.209 Hot Mix Asphalt - 9.5 mm (sidewalks, drives, & incidentals) [3/8 in]

Item 403.210 Hot Mix Asphalt - 9.5 mm [3/8 in]

Item 403.211 Hot Mix Asphalt - Shim

Item 403.212 Hot Mix Asphalt - 4.75 mm [3/16 in]

Item 403.213 Hot Mix Asphalt - 12.5 mm [1/2 in] (base and intermediate course)

Price adjustments will be based on the variance in costs for the performance graded binder component of hot mix asphalt. They will be determined as follows:

The quantity of hot mix asphalt for each pay item will be multiplied by the performance graded binder percentages given in the table below times the difference in price in excess of 5 percent between the base price and the period price of asphalt cement. Adjustments will be made upward or downward, as prices increase or decrease.

Item 403.206: 4.5%

Item 403.207: 4.8%

Item 403.208: 5.3%

Item 403.210: 6.0%

Item 403.211: 6.0%

Item 403.212: 6.5%

Item 403.209: 6.0%

Item 403.213: 5.3%

Hot Mix Asphalt: The quantity of hot mix asphalt will be determined from the quantity shown on the progress estimate for each pay period.

Base Price: The base price of performance graded binder to be used is the price per standard ton current with the bid opening date. This price is determined by using the average N.E. Barge Price, FOB, as listed in the Asphalt Weekly Monitor.

Period Price: The period price of performance graded binder will be determined by the Department by using the average N.E. Barge Price, FOB, listed in the Asphalt Weekly Monitor current with the pay period ending date of the progress estimate.

108.5 Right to Withhold Payments The Department may withhold payments claimed by the Contractor on account of:

- A. Defective Work,
- B. Damages for Non-conforming Work,
- C. Failure to provide the Department the opportunity to inspect the Work,
- D. Damage to a third party,
- E. Claims filed or reasonable evidence indicating probable filing of claims,
- F. Failure of the Contractor to make payments to Subcontractors or for Materials or labor,
- G. Substantial evidence that the Project cannot be completed for the unpaid balance,
- H. Substantial evidence that the amount due the Department will exceed the unpaid balance,
- I. Regulatory non-compliance or enforcement,
- J. Failure to submit Closeout Documentation
- K. All other causes that the Department reasonably determines negatively affect the State's interest.

108.6 Taxes, Fees, Allowances, and Notices The Contractor shall pay all taxes, charges, fees, and allowances and give all notices necessary and incidental to the due and lawful prosecution of the Work. Except as expressly provided otherwise in this Contract, all such taxes, charges, fees, and allowances are Incidental to the Contract.

Most items are exempt from Maine sales tax. The Contractor shall Bid in accordance with the Maine statutory exemption from sales tax located at 36 M.R.S.A. §1760, subsections (2) and (61).

108.7 Damages for Non-Conforming Work If the Contractor performs Non-conforming Work that causes the Department to incur costs including environmental costs or penalties, failure of the Federal Highway Administration to participate in certain costs for reasons due to the Contractor's performance, Departmental staff time related to the non-Conformity, penalties, or other damages of any nature whatsoever ("Damages"), then the Contractor shall be liable to the Department for such Damages. The Department, at its option, and without liability, may deduct such Damages from amounts otherwise due the Contractor and/or postpone disbursement of Progress Payments until the non-Conformity is corrected.

108.8 Final Payment Upon Final Acceptance, the Department will prepare a final Invoice reflecting final quantities of the items of Work performed. The Department may require the Contractor to provide information necessary to substantiate Pay Items, including Statements itemizing Force Account Work. The Department will make final payment in the amount of the Work done, less all previous payments and all amounts to be retained or deducted under the provisions of the Contract. For a related provision, see Section 107.9.5 - Final Acceptance.

The Acceptance by the Contractor of the final payment, as evidenced by cashing of the final payment check, constitutes a release to the Department from all claims and liability under the Contract. Upon Final Acceptance, the Contractor is released from further obligation, except for warranty obligations provided for in this Contract.

108.9 General Payment Provisions

108.9.1 Full Compensation Payments to the Contractor shall be full compensation for furnishing all labor, Equipment, Materials, services, and Incidentals used to perform all Work under the Contract in a complete and acceptable manner, and for all risk, loss, damage, or expense of any kind arising from the nature or prosecution of the Work.

108.9.2 No Inflation Adjustments / Interest No payments due the Contractor will be adjusted for inflation. No interest shall be due and payable on any payment due the Contractor, except that the Department will pay statutory interest on uncontested Final

Payments for any period of time that extends beyond 60 Days of the date of Receipt of all Conforming Closeout Documentation. The preceding exception expressly does not include payments regarding pending Issues, a Dispute or claim. For related provisions, see Sections 107.9.5 - Final Acceptance and 108.8 - Final Payment.

108.9.3 Amounts Due the Department Unless expressly provided otherwise in this Contract, in cases where the Department may deduct sums from amounts otherwise due the Contractor and where the sums to be deducted are more than the funds otherwise due the Contractor, the Contractor shall remit all amounts due the Department within 30 Days of receiving an Invoice from the Department. After such 30 Days, the Contractor shall be in Default of this Contract and shall not be entitled to any additional cure period. Statutory interest shall accrue after 60 Days of Receipt of the Invoice.

SECTION 109 - CHANGES

Scope of Section This Section contains general provisions related to changes in quantities, scope, time and payment.

109.1 Changes in Quantities

109.1.1 Changes Permitted The Department may increase or decrease Pay Item quantities from the estimated quantities shown in the Bid Documents, and such increase or decrease shall not be considered Extra Work. Except as expressly provided otherwise in this Contract, the Contractor shall be paid for actual quantities in place and Accepted at the Unit Prices contained in the Contractor's Bid. The Contractor accepts such payment as full and complete compensation.

109.1.2 Substantial Changes to Major Items If quantities of Major Items vary from the estimated quantities contained in the Bid Documents by more than 25%, then the Department may increase or decrease the Unit Price of such item using the extra work process. For related provisions, see Section 109.3 - Extra Work and Section 109.8 - Contract Modification. If an adjustment to the Unit Price is made, it will apply only to that portion of the actual quantity that is less than 75% of the estimated quantity or more than 125% of the estimated quantity.

109.2 Elimination of Items Upon written notification to the Contractor, the